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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/847,811
Filing Date: May 01, 2001
Appellant(s): GENSKE ET AL.

Judith Szepesi, Reg. No. 39,393
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/23/2007 appealing from the Office action mailed 09/14/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|------------------------|----------|---------|
| US PAT-6,442,625 | ROBINSON | 08-2005 |
| US PG Pub-2006/0173781 | DONNER | 08/2006 |
| US PAT 6,910,068 | ZINTEL | 06-2005 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-26, 30, 32, 34, 36-39, 40 are rejected under 35 USC 102(e) as being anticipated by Robinson et al., (USPN 6442625).
2. As per claim 1, Robinson teaches a computer environment where devices are occasionally connected together, a method for automated transmission and execution of an executable file of interest originating from a digital camera, upon the digital camera's connection to a cellular phone, the method comprising:
 - connecting the digital camera to a cellular phone capable of hosting the camera (Robinson, Fig. 5a, col.9, l.4-8, the cellular phone is recognized the command and dials number to remote location to transmit the stored photo data upon the completion of the communication link);
 - identifying at least one particular cellular phone that is connected to the camera, including determining communication information allowing

communication between the camera and the particular cellular phone, and determining command information allowing the camera to invoke execution of a file of interest at the particular cellular phone (Robinson, col. 6, l.39-55, if the module is to be used with a cellular phone, the flash memory be a GSM interface compatible format, and be adaptable so as to be readable and transmittable by a particular manufacture's model of a cellular phone);

- based on said determined communication information, transmitting the executable file of interest from said camera to the particular cellular phone (Robinson, col. 6, l.56- col.7, l.4,col.9, l.2-4, the digital camera system incorporating a flash with user input command to provide the information to cellular phone and instruct the cellular phone transmit the data to remote location); and
- based on said determined command information, invoking execution of the executable file of interest after it has been transmitted to the particular cellular phone (Robinson, col. 7, l.1-4, provides the information to the cellular phone to instruction the cellular phone to dial a preselected telephone number and then transmit the data to the remote location);

3. As per claim 2, Robinson further discloses the method of claim 1, wherein Said executable file of interest comprises a driver file (Robinson, col.6, l.65-col.7,

- 1.4, to dial a preselected telephone number and transmit the data to remote location is a communication stack software corresponding to a driver file).
4. As per claim 3, Robinson further discloses the method of claim 2, wherein said Driver file, upon execution, controls operation of said camera (Robinson, col.9, 1.1-7).
 5. As per claim 4, Robinson further discloses the method of claim 1, wherein said Executable file comprises one of a machine instruction for a target processor and a Java bytecode instruction for a Java virtual machine (Robinson, col.9, 1.1-7, the GSM packet contains the command file of the bytecode serve the same purpose of java code).
 6. As per claim 5, Robinson further discloses the method of claim 1, wherein said executable file comprise an application program capable of executing at said cellular phone (Robinson, col.9, 1.1-7, the GSM packet contains the command file for transmitting the photo to remote location).
 7. As per claim 6, Robinson further discloses the method of claim 1, wherein said camera includes an add-in device capable of being hosted by said cellular phone (Robinson, col. 7, 1.30-34, module 501 can be dismounted from camera and remounted to camera for the new photo).
 8. As per claim 7, Robinson further discloses the method of claim 6, wherein said Camera comprises a digital camera and wherein said method further comprises: Upon execution of said executable file at said cellular phone, transferring image information from said digital camera to said cellular phone

(Robinson, col. 6, 1.39-55).

9. As per claim 8, Robinson further discloses the method of claim 7, further comprises: after transferring said image information from said digital camera to said cellular phone, wirelessly transmitting said image information to a third device (Robinson, col. 6, 1.56- col.7, 1.4,col.9, 1.2-4, the digital camera system incorporating a flash with user input command to provide the information to cellular phone and instruct the cellular phone transmit the data to remote location).
10. As per claim 9, Robinson further discloses the method of claim 1, wherein said cellular phone includes a computing device capable of hosting other devices (Robinson, col.7, 1.40-49).
11. As per claim 10, Robinson further discloses the method of claim 1, wherein said cellular phone includes wireless transmission capability for transferring information received from said camera to other devices (Robinson, col. 6, 1.56- col.7, 1.4,col.9, 1.2-4, the digital camera system incorporating a flash with user input command to provide the information to cellular phone and instruct the cellular phone transmit the data to remote location).
12. As per claim 11, Robinson further discloses the method of claim 1, wherein said camera and cellular phones are occasionally connected together. (Robinson, Fig. 5a).
13. As per claim 12, Robinson further discloses the method of claim 1, wherein said camera and cellular phones are permanently connected together (Robinson,

Fig. 5a).

14. As per claim 13, Robinson further discloses the method of claim 1, wherein said camera and cellular phones are connected together via a serial communication link (Robinson, fig. 5a)
15. As per claim 14, Robinson further discloses the method of claim 1, wherein said camera and cellular phones are connected together via a USB (Universal Serial Bus) (Robinson, fig. 5a)
16. As per claim 15, Robinson further discloses the method of claim 1, wherein said camera and cellular phones are connected together via a USB (Universal Serial Bus) (Robinson, fig. 5a)
17. As per claim 16, Robinson further discloses the method of claim 1, wherein Invocation of said identifying step occurs upon connecting said camera and cellular phones together (Robinson, col. 6, 1.39-55)
18. As per claim 17, Robinson further discloses the method of claim 1, wherein Said identifying step includes: probing the camera's environment for determining which devices, if any, the camera is attached to (Robinson, col. 6, 1.47-51).
19. As per claim 18, Robinson further discloses the method of claim 17, wherein Said probing step includes: determining a default communication medium for probing for new devices (Robinson, col. 6, 1.47-51).
20. As per claim 19, Robinson further discloses the method of claim 18, wherein Said default communication medium is specified initially by factory-preset

Information (Robinson, col.5, l.60-67).

21. As per claim 20, Robinson further discloses the method of claim 18, wherein Said default communication medium is a selected one of a wireless and a wired communication medium (Robinson, col. 7, l.1-4, to instruct the cellular phone to dial a preselected telephone number corresponding to the wireless and a wired communication medium).
22. As per claim 21, Robinson further discloses the method of claim 20, wherein said default communication medium includes a serial (RS-232) and a USR (Universal Serial Bus) wired communication medium (Robinson, fig. 5a, a serial communication link to cellular phone)
23. As per claim 22, Robinson further discloses the method of claim 19, wherein said factory-preset information is stored in a registry of the camera (Robinson, col.3, l.33-36, the flash memory of camera to download information to a cellular phone corresponding to the factory preset information is stored in a registry of camera).
24. As per claim 23, Robinson further discloses the method of claim 19, wherein Said factory-preset information includes a default communication rate and default handshake protocol for at least one potential cellular phone (Robinson, col. 4, l.30-35, the GSM is a wireless protocol includes the communication rate and handshake protocol).
25. As per claim 24, Robinson further discloses the method of claim 17, wherein Said probing step includes: executing an initial sequence of handshake commands and comparing any response received to a list of known response for

- identifying a particular cellular phone (Robinson, col. 4, l.30-35, the GSM is a wireless protocol includes the handshake procedure and identifying the preselected telephone number).
26. As per claim 25, Robinson further discloses the method of claim 17, wherein Said probing step continues until all know potential cellular phone have been enumerated. (Robinson, col. 4, l.30-35, the GSM is a wireless protocol includes the handshake procedure and identifying the preselected telephone number).
27. As per claim 26, Robinson further discloses the method of claim 1, wherein Said identifying step includes: updating a registry at said camera for indicating any connected cellular phone that has been identified (Robinson, col. 24, l.17-21).
28. As per claim 30, Robinson further discloses the method of claim 1, wherein said step of transmitting the executable file of interest includes: opening the executable file of interest at the camera; and streaming the opening executable file of interest from the camera to the cellular phone (Robinson, col.9, l.1-8).
29. As per claim 32, Donner further discloses the method of claim 30, wherein said step of transmitting further comprises: returning to said camera a file handle permitting said camera to access said executable file of interest transmitted to said cellular phone (Robinson, col.6, l.30-38).
30. As per claim 34, Robinson further discloses the method of claim 1, wherein Said executable file in interest comprises a byte-code program, and wherein said cellular phone includes capability for executing byte-code program (Robinson, col.9, l.1-7, the GSM packet contains the command file of the bytecode).

31. As per claim 36, Robinson further discloses the method of claim 1, wherein
Said step of invoking execution of the executable file of interest includes:
Issuing a command from said camera to said cellular phone to begin execution at
said cellular phone of said executable file of interest (Robinson, col.7, l.15-49).
32. As per claim 37, Robinson further discloses the method of claim 1, wherein
Said step of invoking execution of the executable file of interest includes:
triggering execution of said executable file indirectly at said cellular phone by
instructing said cellular phone to restart itself (Robinson, col.6, l.30-38).
33. As per claim 38, Robinson further discloses the method of claim 1, wherein
further comprising: placing said camera in a listing mode, after said camera has
invoked execution of said executable file at said cellular phone (Robinson, col. 4,
l.30-35, the GSM is a wireless protocol includes the polling period corresponding
to listening mode).
34. As per claim 39, Robinson further discloses the method of claim 38, wherein
Said camera awaits commands from said cellular phone, while said camera is in
a listing mode (Robinson, col. 4, l.30-35, the GSM is a wireless protocol includes
the polling period corresponding to awaits command).
35. As per claim 40, Robinson further discloses the method of claim 39, wherein
commands received at said camera from said cellular phone control operation of
said camera (Robinson, fig. 5b, col. 8, l.11-31)
36. Claims 41-50, claiming for multi-device providing automated loading have

limitation corresponding to method claims 1-2, 4, 6, 8, 31, 34-35.

Therefore claim 41-50 are rejected under Robinson's for the same reason set forth in the rejection of claims 1-2, 4, 6, 8, 31, 34-35.

37. Claims 51-67 have limitation corresponding to method claims 1-2, 4, 6, 8, 31-32, 34-35, 38-39. The differences are "the digital camera" is replaced by "the first device" and the "cellular phone" replace by "host device". Therefore claim 51-67 are rejected under Robinson's for the same reason set forth in the rejection of claims 1-2, 4, 6, 8, 31-32, 34-35, 38-39.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

38. Claims 27-29, 31,33, 35, 68-87 are rejected under 35 USC 103(a) as being unpatentable over Robinson in view of Donner et al., (PGPUB 2006/0173781).
39. As per claim 27, Robinson does not specifically disclosed TCP/IP communication between cellular phone and camera.

However, Donner discloses the method of claim 1, further comprising: upon identifying at least one particular cellular phone, ensuring that a state of TCP/IP communication is reached between said camera and the particular identified cellular phone (Donner, [0222], IP over Bluetooth can support TCP/IP, [0263], with the Bluetooth enabled cellular phone it can communicate with the digital camera).

Because knowing that Donner constructs the 3G GSM, WAP having greater bandwidth rate and supports multimedia transmission for cellular phone and digital camera, it would have been obvious to use the high performance and unify wireless protocol incorporating with Robinson's structure to improve the transmission rate. Therefore, the claimed invention would have been obvious to one of ordinary skill in the art at the time of the invention.

40. As per claim 28, Donner discloses the method of claim 27, wherein said step of ensuring that a state TCP/IP communication is reached includes: initiating a PPP (point-point protocol) communication session between said camera and cellular phone, and thereafter, initiating TCP/IP communication session between said camera and cellular phones (Donner, [0222], IP over Bluetooth can support TCP/IP, [0263], with the Bluetooth enabled cellular phone it can communicate with the digital camera).
41. As per claim 29, Donner further discloses the method of claim 27, wherein said step of ensuring that a state TCP/IP communication is reached includes: determining an IP (Internet Protocol) address for said cellular phone (Donner,

[0156]).

42. As per claim 31, Donner further discloses the method of claim 30, wherein Said streaming step includes: employing XML protocol for packing said executable file of interest for delivery to the cellular phone. (Donner, [0188]).
43. As per claim 33, Donner further discloses the method of claim 31, wherein said file handle comprises a file handle that may be understood by said cellular phone for accessing a particular file of interest at said cellular phone (Donner, [0188]).
44. As per claim 35, Donner further discloses the method of claim 1, wherein said executable file of interest comprises a Java program, and wherein said cellular phone includes a Java Virtual Machine for executing Java Programs (Donner, [0167]).
45. Claims 68-87 are rejected under 35 USC 103(a) as being unpatentable over Robinson in view of Donner et al., and further in view of Zintel et al., (USPAT 6910068).
46. As per Claims 68-87 Donner only discloses the XML is used for device communication (Donner, [0188]), but, Donner does not specifically disclose the XML syntax. However Zintel discloses the XML-based Upnp device (Zintel, Abstract, and fig. 45-51) which Donner is mentioned in [0188], it would have been obvious to use the XML syntax of Zintel in the device of Donner. Therefore, the claimed invention would have been obvious to one of ordinary skill in the art at the time of the invention.

(10) Response to Argument

A). “No Executable File is Transmitted. Furthermore Appellant argues that according to the definition of executable file as commonly understood in the art (i.e. Appellant definition of *executable file* “one containing instructions to control the operation of a programmable processor and cause the processor to perform certain functions”), the information “Robinson transmits cannot reasonably be described as “an executable file.” ”

As to the above point A), Examiner submits that Robinson clearly teaches, as acknowledged by the Appellant, a command that is transmitted via a GSM transmission packet from a camera to a cellular phone (Figure 5a, col. 6, lines 56-col. 7, line 4 and col. 7, lines 43-49). Such transmission packet including the command can be reasonably interpreted and described as an “executable file” as Robinson specifically notes that a dial command within the file is transmitted to the cellular phone in order for the phone to perform “the call.” Therefore according to Appellants given definition of an *executable file* above, instructions “to call” are transmitted to the cell phone, akin to a programmable processor, and the cell phone then executes the instructions to make the telephone call. Column 8, lines 60-65 further detail this operational paradigm by stating that the packet information includes “ the telephone number that the cellular phone is to be instructed to call and also *instructions and algorithms* such that the stored flash memory data...can be transmitted...”. It should be noted that the claim language recites an *executable file*, which can be reasonably interpreted as a file which can be executed. The claim does not however require an executable file that is designated by a filename extension such as “.bin” or “.exe.” Therefore, Robinson clearly meets the limitation of transmitting an executable file as defined by the Appellant.

B). No Transmitted Executable File is Invoked. “the camera does not perform an independent invoking execution.”

As to the above point B), Examiner submits that nowhere in the claim does it state the camera must perform an independent invoking execution. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., perform an independent invoking execution) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Upon review of Appellants response to the non-statutory double-patenting rejection, Examiner acknowledges the Terminal Disclaimer filed August 30, 2007 in view of the co-pending U.S. Patent Application No. 09/660,531 and not yet approved according to the current status.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Art Unit: 2444

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